

PART 761—DRUG ELIMINATION PROGRAMS

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Subpart A—General

§ 761.1 Purpose and scope.

This part 761 contains the regulatory requirements for the Assisted Housing Drug Elimination Program and the Public Housing Drug Elimination Program. The purposes of these programs are to:

(a) Eliminate drug-related crime and problems associated with it in and around the premises of Federally assisted low-income housing, and public and Indian housing developments;

(b) Encourage owners of Federally assisted low-income housing, public housing agencies and Indian housing authorities (collectively referred to as HAs), and resident management corporations to develop a plan that includes initiatives that can be sustained over a period of several years for addressing drug-related crime and problems associated with it in and around the premises of housing proposed for funding under this part; and

(c) Make available Federal grants to help owners of Federally assisted low-income housing, HAs, and RMCs carry out their plans.

§ 761.5 Public and Indian housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related crime and problems associated with it within public housing developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of HAs to combat drug-related crime and problems associated with it within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR parts 950 and 964.

§ 761.10 Definitions.

The definitions *Department*, HUD, *Indian, Indian Housing Authority (IHA)*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

Drug intervention means a process to identify assisted housing or public housing resident drug users, to assist them in modifying their behavior, and/or to refer them to drug treatment to reduce or eliminate drug abuse.

Drug prevention means a process to provide goods and services designed to alter factors, including activities, environmental influences, risks, and expectations, that lead to drug abuse.

Drug-related crime shall have the meaning provided in 42 U.S.C. 11905(2).

Drug treatment means a program for the residents of an applicant's development that strives to end drug abuse and to eliminate its negative effects through rehabilitation and relapse prevention.

Federally assisted low-income housing, or assisted housing, shall have the meaning provided in 42 U.S.C. 11905(4). However, sections 221(d)(3) and 221(d)(4) market rate projects with tenant-based assistance contracts and section 8 projects with tenant-based assistance are not considered federally assisted

low-income housing and are not eligible for funding under this part 761.

Governmental jurisdiction means the unit of general local government, State, or area of operation of an Indian tribe in which the housing development administered by the applicant is located.

In and around means within, or adjacent to, the physical boundaries of a housing development.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians, or Alaska Natives.

Local law enforcement agency means a police department, sheriff's office, or other entity of the governmental jurisdiction that has law enforcement responsibilities for the community at large, including the housing developments owned or administered by the applicant. In Indian jurisdictions, this includes tribal prosecutors that assume law enforcement functions analogous to a police department or the Bureau of Indian Affairs (BIA). More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's developments.

Problems associated with drug-related crime means the negative physical, social, educational, and economic impact of drug-related crime on assisted housing residents or public and Indian housing residents, and the deterioration of the assisted housing or public and Indian housing environment because of drug-related crime.

Program income means gross income received by a grantee and directly generated from the use of program funds. When program income is generated by an activity only partially assisted with program funds, the income shall be prorated to reflect the percentage of program funds used.

Resident council (RC), for purposes of the Public Housing Program, means an incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

- (1) It must be representative of the residents it purports to represent;
- (2) It may represent residents in more than one development or in all of the developments of a HA, but it must

fairly represent residents from each development that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

Resident Management Corporation (RMC), for purposes of the Public Housing Program, means the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964 in accordance with the requirements of that part, or with an IHA under 24 CFR part 950, or with an IHA in accordance with the requirements of this part 761. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or the Indian tribe in which it is located;

(2) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(i) Approves the establishment of the corporation, and;

(ii) Has representation on the Board of Directors of the corporation;

(3) It must have an elected Board of Directors;

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation;

(5) Its voting members must be residents of the development or developments it manages;

(6) It must be approved by the resident council or resident organization. If there is no council or organization, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development; and

(7) It may serve as both the resident management corporation and the resident council or the resident organization, so long as the corporation meets

the requirements of part 964 of this chapter for a resident council or the requirements of this part for a resident organization.

Resident organization (RO) shall have the same meaning as *Resident council (RC)*, as defined in this § 761.10.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public or Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1437 note).

Unit of general local government means any city, county, town, municipality, township, parish, village, local public authority (including any public or Indian housing agency under the United States Housing Act of 1937) or other general purpose political subdivision of a State.

Subpart B—Use of Grant Funds

§ 761.15 Applicants and activities.

In any particular funding round, the separate Notices of Funding Availability (NOFAs) published in the FEDERAL REGISTER will contain specific information concerning eligible and ineligible applicants and activities.

(a) *Eligible applicants.* (1) Under the Public Housing Drug Elimination Program (PHDEP), specific information with regard to eligible applicants will appear in the NOFA for each funding round.

(2) Under the Assisted Housing Program (AHDEP), eligible applicants are owners of federally assisted low-income housing, as the term “*Federally assisted low-income housing*” is defined in § 761.10.

(b) *Eligible activities.* An application for funding under the Assisted Housing Program or the Public Housing Program may be for one or more of the eligible activities described in 42 U.S.C. 11903, as further explained or limited in paragraph (b) of this section and in the separate annual Notices of Funding Availability (NOFAs) for each program. All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compli-

ance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(1) *Employment of security personnel*, as provided in 42 U.S.C. 11903(a)(1). For purposes of the Public Housing Program, the following provisions in paragraphs (b)(1)(i) and (b)(1)(ii) of this section apply:

(i) *Security guard personnel.* (A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis.

(B) The applicant, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel are required, as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(1) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the security personnel are expressly prohibited from undertaking.

(ii) *Employment of HA police.* (A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must provide a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA’s Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law enforcement agency and the HA police, if any (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding), and then